

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
)	
Annual Assessment of the Status of)	MB Docket No. 07-269
Competition in the Market for the Delivery)	
of Video Programming)	
)	
)	

COMMENTS OF DISH NETWORK L.L.C.

I. INTRODUCTION AND SUMMARY.

DISH Network L.L.C. (“DISH Network”) provides input on the Commission’s annual review of the status of video competition.¹ DISH Network has continued to improve and expand its satellite TV service by becoming the only Multichannel Video Programming Distributor (“MVPD”) to offer local broadcast stations in all 210 Designated Market Areas (“DMAs”) in the country and continuing to lead the industry in providing consumers with access to online content and innovative products and services.

Despite the significant investment and success of competitive forces in the video industry—particularly the continued viability of satellite TV providers, the rise of major telecommunications company (“telco”) video offerings, and the surge in online video—challenges remain. Cable companies still maintain dominant competitive positions in their territories, and have clear incentives to block competition from satellite and telco providers. All MVPDs also face challenges in obtaining retransmission consent rights for local broadcast stations, because

¹ See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, *Further Notice of Inquiry*, MB Docket No. 07-269, FCC 11-65 (rel. Apr. 21, 2011).

even as the Commission studies incremental reforms to the retransmission consent negotiation process, broadcasters continue to leverage their local monopolies to demand outrageous rate increases and carriage of other programming. The Commission should remain vigilant in its essential role to protect the inroads made by competitive video providers to date, and ensure that consumers continue to benefit from additional competitive choices going forward.

II. SATELLITE PLAYS A CRUCIAL ROLE IN DRIVING COMPETITION AND INNOVATION IN THE PAY-TV MARKET AND COMPETES HEAD TO HEAD WITH CABLE.

DISH Network remains the third largest pay-TV provider in the country and the only MVPD to offer local broadcast stations in all 210 DMAs. DISH Network continues to offer consumers a value-based affordable national offering, while also expanding its leading role in the delivery of high definition (“HD”) programming and mobility options. As of March 31, 2011, DISH Network had 14.191 million subscribers, an increase from 13.584 million subscribers as of March 31, 2009.

A. DISH Network Is the Only MVPD to Launch Local Broadcast Stations in All 210 DMAs and Continues to Expand HD and Other Service Offerings.

DISH Network has continued its leading role in the delivery of local broadcast stations, now in all 210 DMAs plus Puerto Rico. DISH Network retransmits over 2,000 unique local broadcast stations nationwide, more than any other video provider. DISH Network also increased the number of local markets with some broadcast stations in HD from 122 in June 2009 to 170 today, covering 96 percent of households nationwide. DISH Network has similarly focused on expanding the availability of national HD networks in the past couple of years. The number of

core national HD networks (not counting Pay-Per-View and Video-on-Demand channels) sold to subscribers jumped from 84 in June 2009 to 111 today.²

DISH Network is also now able to provide all of the “Big 4” networks in all 210 DMAs with the recent restoration of the company’s Section 119 distant signal license.³ The Section 119 license allows DISH Network to import the signal of an out-of-market Big 4 affiliate to fill in so-called “short markets,” meaning DMAs that lack a local broadcaster affiliated with ABC, CBS, FOX, or NBC.

With respect to programming options, DISH Network offers consumers several programming tiers, including Dish Welcome, Dish Family, Dish America, America’s Top 120, America’s Top 120 Plus, Dish America Silver, America’s Top 200, Dish America Gold, America’s Top 250, and America’s Everything Pak.⁴ DISH Network offers more international programming than any other satellite TV provider, with a choice of over 200 international channels in 28 languages, including five different Spanish-language packages. DISH Network continues to provide affordable options to consumers, for example through the introduction of promotional pricing of \$25.99 for over 60 channels including ESPN HD, CNN HD and TNT HD,

² The ability to expand the amount of local markets and national networks in HD is due in part to two new satellites, as well as the continued roll-out and enhancements of advanced compression and modulation technologies. Specifically, DISH Network expanded available capacity with the launch of two new satellites: the EchoStar 14 satellite on March 20, 2010 and EchoStar 15 on July 20, 2010.

³ See Application of DISH Network, L.L.C. for Qualified Carrier Certification, *Order*, 25 FCC Rcd. 12941 (2010). See also *CBS Broadcasting, et al. v. EchoStar Comm. Corp.*, Order Granting Motion for Recognition as a Qualified Carrier and Waiver of This Court’s October 20, 2006 Injunction, Case 1:98-cv-02651-WPD (S.D. Fla. 2010).

⁴ More information on DISH Network’s programming tiers is available at <http://www.dishnetwork.com/packages/programming/default.aspx>. DISH Network also sets aside capacity to eligible public interest programmers.

as well as local channels. In 2010, DISH Network launched HD Free for Life with a 24-Month agreement and AutoPay with Paperless Billing.

With respect to mobility and online video, DISH Network is taking another leadership role. DISH Network now offers DISHOnline, an online video portal where DISH Network subscribers can watch content from certain networks they subscribe to, such as TLC, Bravo, and FX. DISHOnline also enables subscribers to rent movies and download them to their home Digital Video Recorder (“DVR”) and remotely schedule DVR recordings. Since June 2009, DISH Network has released the first MVPD set-top box with Sling technology built-in, providing consumers an integrated solution to watch their video programming with full remote control functionalities on a plethora of devices, including the iPad. In 2011, DISH Network began offering the Sling Adapter, which attaches to several compatible DISH Network set-top boxes and allows DISH Network subscribers to enjoy their programming on the go – for no extra monthly charge.

B. DISH Network Continues to Face Competition from Cable and Telcos.

DISH Network faces increasing competition in the video distribution market from cable and the telcos. Of those, cable continues to dominate the market, both nationally and at the local level, and will likely do so for the foreseeable future. DISH Network’s terrestrial competitors have an innate advantage over DISH Network’s DBS offering – they have a two-way pipe to the consumer. In contrast, DBS technology is a one-way transmission service and does not include capability for a proprietary, retail consumer broadband product. As a result, DISH Network continues to rely on separate high-speed Internet access options to support some two-way and on-demand functionality in its services, either through partnerships with third-party providers or the ability to bundle satellite TV service with Internet access and telephone service. To help meet this need, DISH Network is now offering voice and Internet service bundles with TV programming in

select areas of several states through its acquisition of Liberty-Bell Telecom (“Liberty-Bell”), and plans to expand into other states.⁵

Comcast, the largest MVPD in the country, continues to dominate the pay-TV industry in its service areas, and has only become stronger after its acquisition of NBC Universal (“NBCU”) in 2010 despite the numerous conditions placed on the merger. Comcast has over 22.76 million pay-TV subscribers,⁶ and “has a substantial share of the total MVPD subscribers in each of its franchise areas.”⁷ As the Commission noted in the order approving the Comcast/NBCU merger, “[t]his transaction would effectuate an unprecedented aggregation of video programming content with control over the means by which video programming is distributed to American viewers offline and, increasingly, online as well,” giving the merged entity “both greater incentive and greater ability to raise prices for its popular video programming to disadvantage Comcast’s rival multichannel distributors (such as telephone companies and [DBS] providers).”⁸ Of course, Comcast (along with the emergent telco providers) also has the advantage of being able to offer its “triple play” service over a single broadband pipe – an advantage that DBS cannot match.

DISH Network also faces increasing competition from telcos, most prominently AT&T U-Verse and Verizon FiOS, both of which are now key competitors in their service areas just a

⁵ Telephone and Internet services are provided by Liberty Bell Telecom, LLC d/b/a DISH Network Phone & Internet, a subsidiary of DISH Network Corporation. The bundle is currently available in Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

⁶ See, e.g., Larry Dignan, *Comcast delivers solid first quarter; Adds Internet, voice subscribers*, ZDNet, May 3, 2011, available at <http://www.zdnet.com/blog/btl/comcast-delivers-solid-first-quarter-adds-internet-voice-subscribers/48180> (last visited June 8, 2011).

⁷ See Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees, *Memorandum Opinion and Order*, 26 FCC Rcd. 4238, ¶ 43 (2010).

⁸ *Id.* ¶ 3.

few short years after their market entry. AT&T U-Verse today has 3.2 million subscribers,⁹ having added over 1 million subscribers in 2009¹⁰ and 922,000 subscribers in 2010.¹¹ AT&T's U-Verse service reportedly is available in various communities in 22 states.¹² Verizon FiOS today has more than 3.7 million subscribers,¹³ having added nearly 730,000 subscribers in 2010 after adding 950,000 in 2009.¹⁴ Verizon FiOS reportedly is available in various communities in 16 states and the District of Columbia.¹⁵ AT&T reportedly plans to offer U-Verse across much, but not all, of its wireline service footprint by the end of 2011, "with 55 percent to 60 percent, or

⁹ *Verizon joins AT&T in pay-TV subscriber growth, adds 192,000 FiOS TV customers in 1Q*, Fierce IPTV, Apr. 21, 2011, available at <http://www.fierceiptv.com/story/verizon-joins-att-pay-tv-subscriber-growth-adds-192000-fios-tv-customers-1q/2011-04-21> (last visited June 8, 2011).

¹⁰ See AT&T Press Release, *AT&T Reports Fourth-Quarter Earnings Growth with a 2.7 Million Net Gain in Wireless Subscribers, Continued Strong Growth in IP-Based Revenues, Record Full-Year Cash Flow*, Jan. 28, 2010, available at http://www.corp.att.com/emea/insights/pr/eng/q4_290110.html (last visited Jun. 8, 2010).

¹¹ See Reinhardt Krause, *Cable TV's Subscriber Losses Mount*, Investors.Com, Mar. 17, 2011, available at <http://www.investors.com/NewsAndAnalysis/Article/566402/201103171842/Cable-Subscriber-Losses-Mount.aspx> (last visited Jun. 8, 2011).

¹² The states include Alabama, Arkansas, California, Connecticut, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Wisconsin. See <http://www.attoffer.com/uverse/uverse-tv.html> (last visited Jun. 8, 2011).

¹³ See *Verizon joins AT&T in pay-TV subscriber growth, adds 192,000 FiOS TV customers in 1Q*, Fierce IPTV, Apr. 21, 2011, available at <http://www.fierceiptv.com/story/verizon-joins-att-pay-tv-subscriber-growth-adds-192000-fios-tv-customers-1q/2011-04-21> (last visited June 8, 2011).

¹⁴ See Georg Szalai, *Verizon Ended 2010 With 3.5 Million FiOS TV Users*, The Hollywood Reporter, Jan. 25, 2011, available at <http://www.hollywoodreporter.com/news/verizon-ended-2010-35-million-75493> (last visited Jun. 8, 2011).

¹⁵ The states include California, Connecticut, Washington D.C., Delaware, Florida, Indiana, Massachusetts, Maryland, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Virginia, and Washington. See *Verizon FiOS Availability*, iFiberCompany.com: A Consumer's Guide and Resource to Verizon FiOS TV and High Speed Internet, available at <http://www.ifibercompany.com/VerizonFiosAvailability.asp> (last visited Jun. 8, 2011).

roughly 30 million homes, having access” to the service.¹⁶ Verizon FiOS service is available to nearly 16 million homes, with plans to reach 18 million households by the end of its current build-out.¹⁷ And AT&T and Verizon are not alone. Other telcos are beginning to launch video service in their respective service territories. For example, CenturyLink has been rolling out a digital TV service in some of its service areas.¹⁸ As telcos continue to push into the pay-TV market, offering competitive “triple play” packages over a single pipe to the home, DISH Network will continue to face further competition from those companies in addition to cable.

III. ONLINE VIDEO PRODUCTS AND SERVICES ARE INTRODUCING NOVEL WAYS TO PROVIDE CONTENT TO CONSUMERS.

DISH Network also faces increasing competition from emerging providers of content via the Internet. Since the last time the Commission sought comment on the state of video competition, the marketplace has transformed into an amalgamation of multiple distribution methods reaching multiple devices. Various companies now offer online services distributing movies, television shows and other video programming. Moreover, new technologies have been,

¹⁶ See Jim O’Neill, *U-verse pause in IPTV buildout an opportunity to focus on improving penetration*, Fierce IPTV, May 24, 2011, available at <http://www.fierceiptv.com/story/u-verse-pause-iptv-buildout-opportunity-focus-improving-penetration/2011-05-24> (last visited Jun. 8, 2011).

¹⁷ See Anthony J. Melone, Executive Vice President and Chief Technology Officer, Verizon, Speech at *TIA 2011: Inside the Network*, May 19, 2011, available at http://www22.verizon.com/onecms/leadershipteam/anthony_melone/telecommunicationsindustryassociation2011:insidethenetwork/?IsBio=N (last visited Jun. 8, 2011) (“Today our all-fiber FiOS network covers nearly 16 million homes and will be available to about 18 million households by the time we’re through.”)

¹⁸ See CenturyLink Press Release, *CenturyLink Launches Prism TV in Southwest Florida*, May 26, 2011, available at <http://news.centurylink.com/index.php?s=43&item=2454> (last visited June 8, 2011) (“CenturyLink™ Prism™ TV is a 100 percent digital TV service offering local, premium and high-definition channels delivered over the communications company’s advanced, managed network. Prism is built on an interactive platform, where updates are made automatically to offer customers a better combination of TV entertainment features compared to cable and satellite.”)

and will likely continue to be, developed that further increase the number of competitors DISH Network faces with respect to video services. These online platforms may cause DISH Network subscribers to disconnect services, or to purchase a certain portion of the services that they would have historically purchased from DISH Network through these online platforms.

Of course, the full competitive impact of online video is still in flux. What is clear is that online video's competitive impact is likely to be more fully felt by DBS providers before it has any substantial effect on cable. This is because cable, with its two-way pipe into the home, can more easily offer its own integrated online video products. In rural areas where cable and telcos do not yet offer pay-TV service, U.S. households may have increasing access to broadband Internet access as the result of the Commission's efforts under the National Broadband Plan and the improvements in satellite broadband technology. Where broadband is available, consumers may look to online video services as a complement to, or possibly a competitive replacement for, DBS service.

IV. WITHOUT REFORM TO THE RETRANSMISSION CONSENT RULES, DISH NETWORK FACES ONGOING CHALLENGES TO OBTAIN LOCAL BROADCAST PROGRAMMING AT FAIR PRICES.

DISH Network's ability to compete in the MVPD market depends critically on its ability to obtain retransmission consent rights to local broadcast programming. Millions of consumers in every region of the United States pay their bills on time and expect access to local broadcast stations. Instead, they have been held hostage and had their service interrupted by broadcasters withholding retransmission consent in order to gain an unfair advantage in retransmission consent negotiations. Local and network broadcast programming is highly valued by consumers and widely recognized as a critical input for MVPD competition.

The broadcasters' exclusive right to distribute this must-have network and syndicated programming is underscored by myriad federal subsidies (they received billions of dollars worth

of spectrum for free, at tremendous cost to the American taxpayer) and protections, including network non-duplication, syndicated exclusivity, sports blackout rules, and statutory local-into-local geographic limitations imposed on DBS providers. Broadcasters increasingly abuse this market power in an effort to preserve their existing government-sanctioned monopolies and undermine competition in the MVPD market. As a result, DISH Network urges the Commission to enact a number of changes to its rules in its separate proceeding on retransmission consent reform¹⁹ to level the playing field, protect the public, and minimize service disruptions.

V. CONCLUSION.

The Commission should recognize the continued strides of the video market to provide consumers with more choice and innovative services. At the same time, the Commission should remain vigilant in its essential oversight role to ensure that competition among video providers increases and consumers gain greater control over their video products.

Respectfully submitted,

/s/

Jeffrey H. Blum, Senior Vice President &
Deputy General Counsel
Alison Minea, Corporate Counsel
DISH Network L.L.C.
1110 Vermont Avenue, N.W., Suite 750
Washington, DC 20005
(202) 293-0981

June 8, 2011

¹⁹ See generally Comments of DISH Network L.L.C., *Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket No. 10-71 (filed May 27, 2011). See also Amendment of the Commission's Rules Related to Retransmission Consent, *Notice of Proposed Rulemaking*, 26 FCC Rcd. 2718 (2011).